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STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE BOARD OF ACCOUNTANCY

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| In the Matter of Sheri A. Merkling | <b>FINDINGS OF FACT,<br/>CONCLUSIONS,<br/>AND RECOMMENDATION</b> |
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This matter came on for a Prehearing Conference before Administrative Law Judge Kathleen D. Sheehy on October 5, 2010, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed that day.

Gregory P. Huwe, Assistant Attorney General, 445 Minnesota Street, Suite 1800, St. Paul, MN 55101-2134, appeared on behalf of the Complaint Investigation Committee (Committee) of the Board of Accountancy (Board).

Sheri A. Merkling (Respondent) did not appear personally or through counsel at the prehearing conference.

**STATEMENT OF THE ISSUES**

The issues presented are whether the Board should discipline the Respondent because:

1. The Respondent violated a statute or rule the Board is empowered to enforce, pursuant to Minn. Stat. § 326A.08, subd. 5(1) (2008);<sup>1</sup>
2. The Respondent failed to cooperate with an investigation of the Board, in violation of Minn. R. 1105.1300;
3. The Respondent failed to respond to communications from the Board, in violation of Minn. R. 1105.1200;
4. The Respondent failed to perform services in accordance with professional standards, in violation of Minn. Stat. § 326A.10(b); and

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<sup>1</sup> All references to Minnesota Statutes are to the 2008 edition; all references to Minnesota Rules are to the 2009 edition.

5. The Respondent committed acts discreditable to the profession, in violation of Minn. R. 1100.4300, subps. 1, 6, & 7.<sup>2</sup>

Based on the evidence in the record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT**

1. On August 24, 2010, the Notice and Order for Hearing and Prehearing Conference in this matter was served on the Respondent by certified and first-class mail sent to the Respondent's last known address.<sup>3</sup> The mailings were not returned by the Postal Service.

2. The Notice and Order for Hearing and Prehearing Conference mailed to the Respondent included the following notice, on page 3:

Respondent's failure to appear at the prehearing conference or the hearing may result in a finding that the Respondent is in default, that the Board's allegations contained in this Notice and Order may be accepted as true, and its proposed action may be upheld.

3. The Respondent did not file a Notice of Appearance with the Administrative Law Judge or make any request for a continuance or any other relief. The Respondent did not appear at the Prehearing Conference scheduled for October 5, 2010, or have an appearance made on her behalf.

4. The Notice and Order for Hearing alleges that on August 2, 1993, the Board issued a CPA certificate to the Respondent; in March 2009, the Respondent was retained to complete and file the 2008 personal and business taxes for a client; the Respondent accepted payment for these services but failed to file and complete the tax returns; the Respondent failed to appear at a conference with the Complaint Committee on May 7, 2010; and the Respondent failed to respond to communications from the Board.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Board of Accountancy have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 214.10 and 326A.08.

2. The Board has given proper notice of the prehearing conference in this matter and has fulfilled all procedural requirements of law or rule.

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<sup>2</sup> The Administrative Law Judge believes this rule citation is a typographical error and that the intended reference is Minn. R. 1105.7800, which defines acts discreditable to the profession.

<sup>3</sup> Affidavit of Service by U.S. Mail (Aug. 24, 2010).

3. Because the Respondent failed to appear at the Prehearing Conference in this matter, she is in default. Pursuant to Minn. R. 1400.6000, the Administrative Law Judge must deem the allegations contained in the Notice and Order for Hearing and Prehearing Conference to be true.

4. The Respondent is subject to discipline for violating a statute or rule the Board is empowered to enforce, pursuant to Minn. Stat. § 326A.08, subd. 5(1).

5. The Respondent failed to cooperate with an investigation of the Board, in violation of Minn. R. 1105.1300.

6. The Respondent failed to respond to communications from the Board, in violation of Minn. R. 1105.1200.

7. The Respondent failed to perform services in accordance with professional standards, in violation of Minn. Stat. § 326A.10(b).

8. The Respondent committed acts discreditable to the profession, in violation of Minn. R. 1100.7800 A and I.

9. Minn. Stat. §§ 326A.02 and 326A.08 empower the Board to take disciplinary action against the Respondent based upon the above violations.

10. The imposition of a disciplinary action against the Respondent is in the public interest.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that disciplinary action be taken against the CPA Certificate of Shari A. Merkling.

Dated: October 8, 2010

s/Kathleen D. Sheehy

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KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Default

## **NOTICE**

This report is a recommendation, not a final decision. The Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Doreen Johnson Frost, Executive Director, Board of Accountancy, Suite 125, 85 East Seventh Place, St. Paul, MN 55101, (telephone 651- 296-7938) to learn the procedure for filing exceptions or presenting argument.

If the Board fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Board must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Board, or upon the expiration of the deadline for doing so. The Board must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.